

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JORDAN HEATH,)	
Petitioner,)	Civil Action No. 13-47 Erie
)	
v.)	Chief Judge Sean J. McLaughlin
)	Magistrate Judge Susan Paradise Baxter
SCI FOREST,)	
Respondent.)	

MEMORANDUM ORDER

SEAN J. McLAUGHLIN, Chief District Judge.

The petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254, was filed on or around April 10, 2013, and was referred to United States Magistrate Judge Susan Paradise Baxter for a report and recommendation in accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Local Rules for Magistrate Judges. The Petitioner, Jordan Heath, is a state prisoner currently serving several sentences imposed by the Court of Common Pleas of Philadelphia County. In the instant habeas petition, Heath challenges a judgment of sentence imposed by the Court of Common Pleas of Forest County for the summary offense of Disorderly Conduct that he committed while he was incarcerated at an institution located in that county. According to Heath, the Court of Common Pleas of Forest County imposed upon him a sentence of "payments/fines/fees." [ECF No. 7 at 1].

On April 29, 2013, the Magistrate Judge issued a Report and Recommendation [ECF No. 9] in which she recommended that the petition be summarily dismissed prior to service. She explained that since Heath is not "in custody" as a consequence of the Court of Common Pleas of Forest County's judgment of sentence, this Court does not have jurisdiction under 28 U.S.C. § 2254 to review its validity. United States ex rel. Dessus v. Commonwealth of Pennsylvania, 452 F.2d 557, 561 (3d Cir.

1971) ("this court is without jurisdiction to review a petition for habeas corpus where petitioner was given a non-custodial sentence."); Wells v. Varner, 392 F.App'x 914, 917-19 (3d Cir. 2010) (the "in custody" prerequisite to habeas jurisdiction was not met because the petitioner, who was serving a life term for murder, was challenging a conviction on a count for which the sentence was suspended); Barry v. Bergen Co. Probation Dep't, 128 F.3d 152, 160 (3d Cir. 1997) (listing cases and noting that "several courts have held that the imposition of a fine or restitution does not constitute custody."). See also Brian R. Means, Federal Habeas Manual § 1:3 (May 2013) ("The custody requirement is jurisdictional.") (citing, *inter alia*, Maleng v. Cook, 490 U.S. 488, 490 (1989) (*per curiam*)).

Objections were filed by Heath on May 13, 2013. [ECF No. 10]. Where, as here, objections have been filed, the Court is required to make a *de novo* determination as to those portions of the R&R to which objections were made. See 28 U.S.C. § 636(b)(1). Accordingly, this Court has carefully examined *de novo* all arguments raised by Heath in his Objections and we find that they have no merit.

Heath takes issue with the Magistrate Judge's statement in the Report and Recommendation that he pleaded guilty to the summary offense of Disorderly Conduct. He claims that "there was no plea deal." If that it is true, it is immaterial to our analysis. Regardless of whether Heath pleaded guilty or was convicted following a trial, the fact remains that the Court of Common Pleas of Forest County did not impose a custodial sentence upon him. Therefore, this Court lacks subject matter jurisdiction and the petition must be dismissed.

In conclusion, after *de novo* review of the petition and documents in this case, together with the Report and Recommendation and Objections thereto, the following order is entered:

AND NOW, this 23rd day of May, 2013;

IT IS HEREBY ORDERED that the petition for a writ of habeas corpus [ECF No. 7] is summarily dismissed and a certificate of appealability is denied. The Report and Recommendation [ECF

No. 9] of Magistrate Judge Baxter, filed on April 29, 2013, is adopted as the opinion of the Court as supplemented herein.

The Clerk is directed to mark the case closed.

cc: All parties of record
Susan Paradise Baxter,
U.S. Magistrate Judge

s/
Sean J. McLaughlin
Chief United States District Judge